

**BOARD OF APPEALS
For
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. S-2516

PETITION OF HAPPY TAILS OF MD, INC. AND TRACY RYAN

OPINION OF THE BOARD

(Hearing Date: December 16, 2002)
(Effective date of Opinion: June 19, 2003)

Case No. S-2516 is the petition of Happy Tails of MD, Inc. and Tracy Ryan for a special exception pursuant to Section 59-G-2.02 of the Zoning Ordinance to permit the operation of an animal boarding place.

By Resolution adopted September 11, 2002 and effective October 3, 2002, the Board of Appeals referred this matter to the Office of Zoning and Administrative Hearings (OZAH), acting under the provisions of Section 59-A-4.125. The Hearing Examiner held a hearing on December 16, 2002, at which time evidence and testimony was submitted to the Hearing Examiner in support of, and in opposition to, the petition.

The Board of Appeals received a Report and Recommendation in the above-captioned case, dated April 1, 2003, from the Hearing Examiner for Montgomery County. The Hearing Examiner finds that the special exception application satisfies all of the general and specific standards for the use. The Hearing Examiner also submitted a Supplement to its April 1, 2003 Report and Recommendation, dated April 9, 2003, clarifying the hours of operation, which were misstated in the Planning Board Recommendation and the original Hearing Examiner's Report and Recommendation, due to a typographical error in the Technical Staff Report prepared for the Planning Board by the Technical Staff of the Maryland-National Capital Park and Planning Commission. In the Supplement, the Hearing Examiner reaffirmed the findings of fact, conclusions of law and recommendations as set forth in the original Report and Recommendation, dated April 1, 2003.

Decision of the Board: Requested Special Exception **granted**,

Subject to conditions enumerated below.

The Subject Property is known as Parcel 592 on Tax Map JT52 in the Snowden's Manor subdivision, and is located at 17717 New Hampshire Avenue, Ashton, Maryland, in the Rural Cluster (RC) Zone.

At its Worksession on April 16, 2003, the Board of Appeals voted to adopt the Hearing Examiner's Report and Recommendation, as modified by the Supplement to the Hearing Examiner's Report and Recommendation dated April 9, 2003, and approve the special exception subject to the following conditions:

1. The Petitioners are bound by all of the Petitioners' testimony and exhibits of record and are bound by the testimony of the Petitioners' witnesses and attorney's representations, to the extent that the evidence and representations are identified in the Hearing Examiner's Report and Recommendation and in the opinion of the Board.
2. The hours for animal drop-off or pick-up will be Monday through Saturday between 7:30 a.m. and 8:00 p.m. and on Sundays from 12:00 p.m. to 5:00 p.m.
3. Approval of a preliminary plan of subdivision is required by the Montgomery County Planning Board, prior to the issuance of any building permits.
4. The proposed septic field must be relocated or resized, as appropriate, to reduce encroachment on the critical root zone of specimen trees to less than 30%. This must be shown on a Tree Save Plan submitted and approved by M-NCPPC prior to Department of Permitting Services (DPS) approval of stormwater management and sediment and erosion control plans.
5. A maximum of fifteen dogs and five cats may be boarded in the facility.

On a motion by Donna L. Barron, seconded by Louise L. Mayer, with Allison Ishihara Fultz, Angelo M. Caputo and Donald H. Spence, Jr., Chairman in agreement:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of

Appeals

Entered in the Opinion Book
Of the Board of Appeals for
Montgomery County, Maryland
this 19th day of June, 2003.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.